

## **CONFIDENTIAL**

**From:** David Eichenthal  
Director, Office of Performance Review

**To:** Mayor Bob Corker

**Re:** Preliminary Review of Procurement in the City of Chattanooga  
OPR 03-01

**Date:** November 22, 2002

### **Methodology**

In September, the Office of Performance Review (OPR) began a preliminary review of the City's contracting process, with a specific focus on the level of competition in the City bidding process. The purpose of the review was to determine whether a subsequent audit of the procurement process should be a priority.

OPR initially selected a sample of nine contracts awarded to the nine firms that – based on data in the City's BANNER accounting system -- had received the most payments from the City for contracted work during FY 2002. Subsequently, OPR decided to prepare a more detailed review of the City's contracts with one of the initial nine firms under review. In total, OPR reviewed 16 contracts with a total contract award value of \$73,993,273.23.

For each contract, OPR staff interviewed relevant department staff and reviewed department contract files.

### **Background: The City of Chattanooga as Consumer**

Like all municipal governments, Chattanooga expends a significant share of its annual budget on procuring goods, services and construction. Unfortunately, the City does not have a contract management system that tracks all awards. Also, the BANNER system does not provide an easy means of calculating the precise amount expended by City departments on conventional procurement. For example, BANNER treats all payments to outside vendors the same – whether they are payments for property, to settle a claim against the City or to buy goods and services. In FY 2002, payments to outside vendors by City departments that report directly to the Mayor totaled \$139.6 million. Of this amount, approximately \$80 million went toward conventional procurement. And of that amount, \$33.5 million went to 15 firms that each received more than \$1 million in City funds.

The procurement process for most City contracts is directed by the City's Purchasing Department. When a department seeks to acquire a good or service, they contact

Purchasing which then oversees the actual bid or request for proposal process. Purchasing is also responsible for blanket order or requirements contracts for certain goods and services. These contracts allow different departments to buy the same good or service for a set price.

**TABLE 1: City Contractors with Payments Greater than \$1 Million**

<b>Contractor</b>	<b>Total City Payments</b>
Raines Brothers Inc	\$6,117,813.54
J & J Contractors Inc	3,892,680.50
Mayse Construction &	3,530,428.24
Jones Brothers Inc	3,120,452.73
Vulcan Materials Company	2,991,071.31
Lee-Smith Inc	2,290,336.11
Soloff Builders Inc	1,676,521.00
3-D Enterprises Contracting Corp	1,611,960.10
East Tennessee Grading Inc	1,345,907.27
U S Filter	1,268,427.85
Hines Interests Limited Partnership	1,228,732.68
Case Construction Services Inc	1,093,841.13
W C Teas Co Inc	1,127,069.90
Stein Construction Co	1,085,485.66
Wes Blakemore Trucking	1,087,409.75

A significant exception to this process, however, is the procurement of both design and construction services. Individual departments have discretion to oversee the procurement of design services. And the Department of Public Works independently contracts and oversees the procurement of its construction services projects. Purchasing only enters the Department of Public Works contract information into the Banner system for the purpose of establishing a mechanism for payment. That only occurs when Purchasing learns of the approval of the procurement through review of the City Council minutes. Occasionally, the Department of Public Works may also oversee the design and construction services of projects for other departments when requested.

In the case of design contracts, the Purchasing Department does not participate in the procurement at all. Here again, its only involvement is to enter information into the BANNER system for the purpose of establishing a mechanism for payment. However, the Purchasing Department oversees the actual bid or request for proposal process for the procurement of construction services for all other departments, unless the department exercises the option to utilize the Department of Public Works as its project manager.

Under the City Code, any contract with a value of more than \$ 10,000 must be approved by the City Council. Before awarding a contract valued at greater than \$1,000, the City must solicit three or more quotations. Contracts for design services are not subject to competitive bidding.

### **Competition in City Contracts**

In general, the more qualified, responsible bidders who seek to contract with the City, the higher the likely quality of work and the lower the price. Both State and local law exhibit a preference for selection of contractors through a competitive bidding process. And, as a rule of thumb, contracting is competitive if three or more firms submit bids on a contract.

Competition is especially important when the City is planning to expend large sums of public funds on contracted goods or services – as was the case in the initial eight contracts reviewed by OPR.

**TABLE 2: Competition in City Contracts – Group 1**

<b>Contractor</b>	<b>Purpose</b>	<b>Council Approval</b>	<b>Award Value</b>	<b>Bids</b>
3D Enterprises	Contract #28G Plant Expansion and Wet Weather Treatment – Moccasin Bend Wastewater Treatment Plant	1998	\$18,450,000	7
U.S. Filter	Contract #28K Filter Press – Moccasin Bend Wastewater Treatment Plant	2001	\$7,770,281	2
Lee-Smith	P0013607 Automobile Parts	1999	\$3,399,996	3
Raines Brothers	CSO-6-99 MLK CSO Control Facility	2000	\$3,497,267.14	6
Soloff Builders	P00115604 S. Chattanooga Recreation Center	2000	\$3,377,877	5
Jones Brothers	RW-3-00 P0015840 Shallowford Road	2000	\$2,501,787.10	4
Mayse Construction	SWM-3-99 P0016408 Stormwater Improvement	2001	\$1,080,876.78	2
East Tennessee Grading	SS-1-98 P0014249 17 <sup>th</sup> Street Underground Stormwater Detention	2001	\$336,450	6

Overall, the contracts initially reviewed by OPR had a relatively high degree of competition. Yet in the case of two of the eight contracts – 25% of the sample reviewed - the City was able to attract only two bids.

### ***Problems with the U.S. Filter Procurement***

The award process for the \$7.8 million contract between the City and U.S. Filter raised a series of questions. The City's consultant on the project, Consolidated Technologies, Inc. (CTI) oversaw the actual bidding process for the filter press system. Only two firms – U.S. Filter and Dry Vac Environmental – bid.

The first bid opening for this contract was held on March 15, 2001, with a low evaluated bid of \$8 million submitted by Dry Vac and a bid of \$11.95 million submitted by a joint venture of U.S. Filter and JWI Inc. The initial bids were rejected because the proposed costs were higher than the budget for the project.

As part of the rebid, the project scope was changed going from an eight filter press system to a six filter press system with the option to acquire two additional filters. The same two firms – Dry Vac and the U.S. Filter joint venture – submitted bids and, again, based on the total evaluated bid Dry Vac was the low bidder at a cost of \$4,396,065 compared to a total evaluated bid of \$6,584,546.

In a May 29, 2001 letter to City Engineer Philip Lynn, CTI recommended that a contract be awarded to for U.S. Filter. CTI's recommendation appears to have been based on the following factors:

- Dry Vac failed to conduct additional on site testing to support higher performance guarantees that were factored into the evaluated bid. CTI substituted Dry Vac's earlier performance guarantees to generate a revised evaluation bid of \$5,741,424 – still lower than the U.S. Filter bid.
- CTI noted that because the City really wanted an eight filter press system to accommodate five day a week operation (avoiding overtime and other costs), it will likely exercise its option to add two more filter presses. Dry Vac's bid for additional filter presses was significantly higher than that proposed by U.S. Filter. The result of the change in the evaluation bid further inflated Dry Vac's bid price.
- Finally, while CTI acknowledges that Dry Vac would be legally liable to satisfy any cost difference between guaranteed and actual performance costs, it cast uncertainty on Dry Vac's ability to do so. CTI's Vice President Paul Cate wrote: "Dry Vac is a small, privately held company. Based on the limited financial data submitted since the initial bid, they most likely would not be able to absorb a potential penalty assessment of over \$1,300,000."

In effect, CTI revised the basis for evaluating the low bid after acknowledging that "From the Bid Tabulation, U.S. Filter is substantially lower on the base bid." By changing the

rules in the middle of the bidding process, CTI guaranteed the award of the contract to U.S. Filter.

It is beyond the scope of this review to determine whether Dry Vac would have been a superior contractor or whether the City would have actually realized a lower cost. But the process is troubling.

In interviews with senior staff at CTI, they explained that the procurement process was driven by the City's earlier decision on the best technology to use to process sludge. In addition to its role in the U.S. Filter procurement, CTI had led the effort to identify sludge treatment options for the City.

According to CTI, the process selected was not the lowest in cost in capital outlay, but was projected to be the lowest in operating cost. A present value analysis led CTI to recommend – and the City to adopt – the vacuum assisted drying filter press as the preferred process. The problem, however, was that this technology was, in the words of one CTI official “state of the art.” There were few instances of its use prior to adoption by the City of Chattanooga.

The technology was first presented to CTI and the City by Dry Vac. Although CTI officials stated that they only considered technologies where there were at least two suppliers, they conceded that the initial evaluation of the selected technology occurred when there was only one identified supplier – Dry Vac.

At some time during the process, U.S. Filter was identified as another potential provider. ***Once a second potential competitor was identified, there was no further effort to identify additional bidders.*** CTI officials state that there was a general awareness in the industry that the City was planning significant work at Moccasin Bend and that there was a notice of the work in Dodge Report.

According to CTI, the basis for determining the preferred technology included cost estimates supplied by the bidders. Yet, the actual bids on the original contract letting were double the estimates provided to CTI, prompting the rebid.

During the course of the bidding process, concerns were raised about Dry Vac's ability to provide the presses and to guarantee their performance. Again, because the technology was selected on the basis of its operating costs, performance guarantees were critical. Dry Vac refused to submit financial information prior to the bid and never furnished a bid bond. One CTI official indicated that he felt “mislead” about Dry Vac's capability to provide the required equipment. Thus, by the time the only two bids were submitted, CTI had made a de facto determination that only one bidder – U.S. Filter was qualified and capable to produce the required technology.

In this case, the lack of competition was driven by the decision to adopt a state of the art technology and the absence of significant efforts to identify or induce additional competition.

### ***Contracts Awarded to Vulcan Materials Lack Competition***

OPR planned to analyze one contract between the City of Chattanooga and Vulcan Materials – the fifth largest recipient of City contractor payments in FY 2002. OPR reviewed the award of a \$2,145,065 contract for pavement resurfacing that was approved by the City Council on March 13, 2001. Vulcan was one of only two bidders on this contract: the other bidder was Highways, Inc. with a bid of \$2,428,025.

Subsequently, OPR learned that the City had recently bid a 2002 contract for pavement resurfacing. Again, the only two bidders were Highways Inc and Vulcan Materials, though this time Highways Inc. was the low bidder with a bid of \$1,529,300.

OPR expanded its review to examine an additional seven contracts awarded by the City to Vulcan Materials since 1997. The results of the review indicate that Vulcan Materials consistently is awarded City work without the benefit of significant competition.

According to Naveed Minhas of the Public Works Department, the lack of competition reflects a limited pool of bidders for these goods and services in the Chattanooga area. Yet, no effort has been made to determine whether TDOT, TVA, the County or other government entities that use the same supplies and perform pavement work have been successful in attracting other bidders. The consistent lack of competition on these contracts is troubling.

**TABLE 3 – Competition in City Contracts: Vulcan Materials**

<b>Contract</b>	<b>Bids</b>	<b>Outcome</b>	<b>Vulcan Contract Award Amount</b>	<b>Council Approval</b>
P0016890 Concrete requirements contract (12 months with option to renew for 12 months)	2	Both bidders – BHY and Vulcan Materials -- were awarded contracts with the primary contract to Vulcan Materials	\$12,113,788.50	2001
P0013358 Concrete requirements contract	2	Originally awarded to Vulcan Materials as a one year (1997-8) contract with a one year option (1998-9). The contract was repeatedly extended without bidding until 2001. Subsequently, the second bidder BHY was also awarded a contract.	\$12,048,795.00	1997
P0012545 Bituminous Plant Mix	2	Awarded to Vulcan Materials. Southeastern Materials was the only other bidder	\$3,130,613.50	1999
P0015626 Bituminous Plant Mix	2	Both bidders, Vulcan Materials and Southeastern Materials were awarded contracts	\$3,002,670.00	2001
P0013362 Washed and Crushed Stone	2	Both bidders, Vulcan Materials and Hanson Cornerstone/Benchmark were awarded contracts.	\$577,942.20	1999
P0016770 Washed and Crushed Stone	3	Two bidders, Vulcan Materials and Hanson/Cornerstone/Benchmark, were awarded contracts	\$499,950.00	2001
P0015687 Emulsion and Emulsified Asphalt	1	Sole source contract	\$59,944.01	2000

**Recommendations**

1. The difficulty in accessing information on the way the City awards contracts is astounding. City of Chattanooga needs a centralized database to track the procurement process for all contracts. Data regarding the bidding process for all City contracts should be entered into the new Buyspeed database by the Purchasing Department. The Office of Performance Review will regularly track level of competition on City contracts as a performance indicator.

2. In the case of contracts awarded for \$500,000 or more with fewer than three bids, departments should be required to submit a detailed justification for award to the Mayor before the contract is calendared for City Council approval. The justification should explain all steps taken by the department to ensure a minimum level of competition on the contract.
3. The Department of Public Works needs to immediately develop a plan to increase competition on asphalt and concrete contracts. Public Works, Purchasing and OPR staff should survey all other concrete and asphalt users in the region (e.g. TDOT, TVA, Airport authorities) and identify additional potential bidders. OPR and the Department should jointly interview other potential bidders to determine why they do not bid on City contracts.
4. The City Attorney should resume its practice of having an attorney present at bid openings. It might be possible to limit this requirement to bid openings for contracts where the bids are expected to exceed a certain dollar threshold. Alternatively, the City could consider videotaping bid openings.